REMARKS

This Amendment is submitted in response to the non-final Office Action mailed on February 21, 2006. A petition for a one month extension of time is submitted herewith. The Director is authorized to charge $120.00 for the petition for extension of time and any additional fees which may be required, or to credit any overpayment to Deposit Account No. 02-1818. If such a withdrawal is made, please indicate the Attorney Docket No. 112701-489 on the account statement.

Claims 1-26 and 30 are pending in this application. Claims 27-29 were previously withdrawn. In the Office Action, Claims 21-25 are objected to, Claims 1-14, 17-18, 20, 26 and 30 are rejected under 35 U.S.C. §102 and Claims 15-16 and 19 are rejected under 35 U.S.C. §103. In response Claims 1, 26 and 30 have been amended, and Claim 10 has been canceled. This amendment does not add new matter. In view of the amendment and/or for the reasons set forth below, Applicants respectfully submit that the rejections should be withdrawn.

In the Office Action, Claims 1-14, 17-18, 20, 26 are rejected under 35 U.S.C. §102 as anticipated by U.S. Patent Publication No. 2003/0033938 to Halliday et al. ("*Halliday*"). Applicants respectfully disagree with and traverse this rejection for at least the reasons set forth below.

Independent Claims 1 and 26 have been amended to recite, in part, that the gas is introduced into the foam conditioning conduit upstream of the restriction channel. Independent Claim 30 has been amended to recite, in part, that the gas is introduced upstream of the restriction channel. The amendments as discussed above are fully supported in the specification, for example, on page 3, lines 3-11. In contrast, Applicants respectfully submit that *Halliday* fails to disclose or suggest every element of the present claims as currently amended.

Halliday fails to disclose or suggest that a gas is introduced into a foam conditioning conduit upstream of a restriction channel as required, in part, by the present claims. For example, the present invention provides, in part, a capsule comprising a foam conditioning system that includes a restriction channel followed by a deceleration channel or chamber. The gas is introduced upstream of the restriction channel. The restriction channel is preferably configured to sheer the flow for producing gas bubbles that can be, for example, smaller than the maximum size and foaming the food product to produce foam therein. The gas necessary to form bubbles is already added to the fluid mixture before the restriction channel and not after the

restriction as in *Halliday*. The restriction channel, for example, controls the size of the bubbles passing therethrough.

In contrast, *Halliday* teaches adding air after the restriction hole 16 that leads to an expansion chamber 17. See, *Halliday*, page 3, paragraphs 47-48 and Figure 1. *Halliday* clearly teaches the chamber 17 into which the jet of beverage is delivered is at atmospheric pressure and is connected to an air inlet area 18 by means of an elongate passage 19. Chamber 17 acts as an expansion chamber and, as the pressure of the jet of beverage is reduced, air is incorporated into the beverage via the air passage 19. The jet of beverage issuing through restriction hole 16 impinges on a surface 20 which is positioned in the beverage flow path. The impingement of the jet of beverage on grooves 21 of the surface 20 assists in causing turbulent motion of the beverage and the incorporation of air therein as a plurality of discrete bubbles. As a result, the mixing chamber 17 is meant to be the expansion chamber and is positioned downstream of the restriction hole or nozzle.

In all of the embodiments, *Halliday* teaches adding air after the restriction hole or nozzle that leads to the expansion chamber. See, *Halliday*, Figures 1-7. Consequently, *Halliday* is entirely directed to the foam being formed after the restriction hole by effect of air being added into the expansion chamber and not before or in the restriction hole itself. This difference is importance because *Halliday* does not teach or suggest controlling the bubble size through a restriction channel having a cross-section sufficiently small and sufficient length for feeding bubbles that are smaller than a preselected maximum bubble size as currently claimed.

For at least the reasons discussed above, Applicants respectfully submit that independent Claims 1, 26 and 30 and Claims 2-14, 17-18 and 20 that depend from Claim 1 are novel, nonobvious and distinguishable from the cited reference.

Accordingly, Applicants respectfully request that the rejection of Claims 1-14, 17-18, 20, 26 and 30 under 35 U.S.C. §102 be withdrawn.

Claims 15-16 and 19 are rejected under 35 U.S.C. §103 as being unpatentable over *Halliday*. Applicants respectfully submit that the patentability of Claim 1 as previously discussed renders moot the obviousness rejection of Claims 15-16 and 19 that depend from Claim 1. In this regard, the cited art fails to teach or suggest the elements of Claims 15-16 and 19 in combination with the novel elements of Claim 1.

For the foregoing reasons, Applicants respectfully request reconsideration of the above-identified patent application and earnestly solicit an early allowance of same.

Respectfully submitted,

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